

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-mg
Chapter 11
.
MOTORS LIQUIDATION COMPANY, . (Jointly administered)
et al., f/k/a GENERAL
MOTORS CORP., et al, . One Bowling Green
Debtors. . New York, NY 10004
Thursday, August 17, 2017
3:05 p.m.
.

TRANSCRIPT OF IN COURT CONFERENCE
(CC: DOC NOS. 14053, 14056)
BEFORE THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY COURT JUDGE

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1 (Proceedings commence at 3:05 p.m.)

2 THE COURT: Please be seated. We're here in Motors
3 Liquidation Company, 09-50026. This is a status conference
4 scheduled at the request of certain parties in interest. The
5 Court has received a flurry of letters and attachments over the
6 last few days relating to this matter.

7 Mr. Weisfelner, I'm going to ask you to start.

8 MR. WEISFELNER: Thank you, Judge. Your Honor, first
9 of all, welcome back from vacation.

10 THE COURT: It's been a while, actually, but --

11 MR. WEISFELNER: I'm assuming that like us, you
12 anticipated this status conference was going to have a
13 different tone and tenor. In any event, Ed Weisfelner from
14 Brown Rudnick, together with my partner, Howard Steel. Your
15 Honor, also on our side of the courtroom, William Weintraub and
16 Gregory Fox from Goodwin Procter.

17 Your Honor, we have all three co-leads from the MDL
18 who were also, in different capacities, signatories to the
19 settlement agreement or intended signatories to the settlement
20 agreement. Steve Berman, Elizabeth Cabraser, Robert Hilliard
21 were all in transit when we heard that this hearing was going
22 to take a different turn. Lisa Norman, I believe, is also in
23 court to round out the -- what I'll call plaintiffs' side of
24 the question, all intended signatories to the settlement
25 agreement, the drafts of which were provided to Your Honor.

1 Your Honor, as you know, based on the announcement I
2 made in open court way back in May, the parties, defined as
3 everyone on this side of the table, the GUC Trust and, to a
4 very important extent, the GUC Trust beneficiaries, some 66
5 percent of all the beneficiaries represented by the Akin Gump
6 firm, have been involved, frankly, since before May in
7 discussing the contours of a potential resolution of any number
8 of open matters that are on Your Honor's docket or could be put
9 on Your Honor's docket, including late-filed claims, a
10 propriety of late-filed claims, and the extent to which those
11 claims could or should be allowed.

12 Your Honor, following the May announcement in court,
13 we spent many, many months of discussion among the parties.
14 And as I think Your Honor can see through the email chains that
15 we provided early this morning, no later than late July, early
16 August, there was a final deal among the parties that was
17 subject to some additional fine-tuning of the documentation.
18 And I'll get back to that in a minute, but there were lots and
19 lots of submissions that crossed between the GUC Trust and the
20 unit holders on the one hand and the plaintiffs' side on the
21 other hand, including, in particular, expert reports submitted
22 both by economic loss plaintiffs' retained experts and personal
23 injury/wrongful death retained experts as to the value of their
24 claims.

25 THE COURT: Is the pre-closing at --

1 MR. WEISFELNER: Yes, pre-closing.

2 THE COURT: -- injury or death plaintiffs?

3 MR. WEISFELNER: Correct, Your Honor. There were
4 declarations from Mr. Hilliard, from Mr. Berman, from
5 Ms. Cabraser, from Ms. Norman. There was even a declaration
6 that was provided by Wilmington, the GUC Trust trustee, by a
7 woman by the name of Beth Andrews. And again, from our
8 perspective -- well, before I get there, we also spent a ton of
9 time on the parties with noticed experts, in particular, with
10 the Epoch firm, trying to devise a notice procedure for this
11 settlement that would involve both direct mail notice in the
12 form of a postcard with reference to an appropriate website for
13 the longer version of the agreement, and we also worked quite
14 hard on social media and other methodologies for ensuring that
15 adequate notice went out to the world.

16 Now, Your Honor, no one on our side -- no one in the
17 world, I suspect -- thought that New GM was going to welcome
18 the development of a settlement with open arms. We thought
19 they'd squeal. And, in fact, they started to squeal before
20 Judge Furman this past Friday.

21 THE COURT: Well, actually, I think at an earlier
22 hearing before me, Mr. Steinberg, when I advised that I had
23 received a telephone call from Magistrate Judge Cott about his
24 acting as a mediator, I think Mr. Steinberg, in substance,
25 indicated that New GM had not been a party to any discussions.

1 So I was aware of that, at least as of that time if not --

2 MR. WEISFELNER: Certainly. And just to be more
3 specific, the involvement of Magistrate -- and I continuously
4 mispronounce his name, it's Cott, I think --

5 THE COURT: Cott.

6 MR. WEISFELNER: -- Cott, really involved a
7 down-the-road step as between plaintiffs on --

8 THE COURT: He mentioned that it was mentioned at
9 allocation.

10 MR. WEISFELNER: -- how to allocate. That's right.

11 THE COURT: We didn't talk any further than that
12 about it, but he advised me.

13 MR. WEISFELNER: My point being that we heard from GM
14 as recently -- not to suggest that we didn't hear from them
15 before that, but as recently as Friday during the status
16 conference before Judge Furman in the MDL.

17 THE COURT: Yes. I first heard about it when I read
18 the Bankruptcy 360 report of what Judge Furman was told last
19 Friday, I guess. When the request came for a conference this
20 week here, I wasn't told why, but I did read the Bankruptcy 360
21 report.

22 MR. WEISFELNER: And again, you know, this side of
23 the courtroom, together with the GUC Trust, were accused of all
24 sorts of collusive bad-faith conduct, and GM announced to Judge
25 Furman it was their intent, I think, that day or soon as our

1 papers got filed with this Court to immediately seek withdrawal
2 of the reference.

3 And, Your Honor, again everyone I think anticipated
4 that New GM would take every available opportunity it had to
5 contest all or any portion of the settlement agreement when it
6 came before an appropriate court of jurisdiction, shall we say.
7 They could have raised collusion. They could have raised
8 impropriety. They could have raised that the estimation
9 amounts were outrageous and not supported by the evidence.

10 They didn't choose to do any of that. They didn't
11 choose to afford anyone, including victims, their due process
12 day in court. They instead, from what we currently understand,
13 insisted on a meeting with the GUC trustee, which happened I
14 think, if today is Thursday, apparently on Tuesday of this
15 week, a meeting to which the GUC Trust beneficiaries,
16 represented by Mr. Goldman at Akin Gump were excluded.

17 And somehow, during the course of that meeting
18 between GM and the GUC Trust, the GUC Trust purported to
19 abandon not only its fiduciary duties, but a settlement that it
20 already agreed to and to announce to us, not before 3:30
21 yesterday, that they were, quote, "taking a different tack."

22 Now, Your Honor, this is all still fresh news to us.
23 We've only had a couple of hours to consult with our clients
24 and our colleagues, but I can tell Your Honor what we currently
25 contemplate being the way forward. We know that what's on the

1 calendar are the late claims filings, and I would ask Your
2 Honor to give us a couple of weeks to figure out how we proceed
3 on those.

4 But frankly I think there may very well need to be
5 some preliminary inquiries. And like many in the media, it's
6 important to us that we gather the facts before we speak. But
7 some things we could speak to immediately, and that is we
8 firmly believe that what we had with the GUC Trust was an
9 enforceable agreement under New York law, notwithstanding the
10 fact that signatures had not been appended to those agreements.

11 THE COURT: I didn't read -- you appended to your
12 letter a unsigned copy of the agreement, and I can't say that
13 I've studied every aspect. I did read through it this morning,
14 the --

15 MR. WEISFELNER: Sure. And that's absolutely true.
16 The signatures of the GUC Trust never got appended.

17 Mr. Golden, for the GUC Trust beneficiaries, indicated that
18 they were done and they would sign as soon as they got word
19 that the GUC Trust signed. We were all in possession of
20 execution copies and ready to sign, which would have been the
21 first step before we submitted documents to you.

22 But, Your Honor, I think as you can see from the
23 email traffic, this wasn't a question of whether we had a deal.
24 This was a question of finalizing documents, and in point of
25 fact, Gibson Dunn clearly indicated they were done with all of

1 the operative documents, many of them they had the proverbial
2 pin on, and that they were merely awaiting their clients' final
3 consent to the form of the documents.

4 And again, Your Honor ,I don't want to argue the
5 merits, but I firmly believe, based on everything we know and
6 everything we've researched in the relative short period of
7 time we have, that if we chose to, we could require the GUC
8 Trust to perform under the agreement they had -- we think is
9 enforceable under New York law.

10 We also believe that New GM may have liability for
11 what I'll generally refer to as tortious interference. We are
12 told, but have no reason to know for a fact, that the GUC
13 Trust's about face was the subject of or occasioned by some
14 very direct, very serious threats issued either by New GM or
15 New GM's professionals to the GUC Trust, the administrator of
16 the GUC Trust and their professionals.

17 And, Your Honor, in an effort to understand all the
18 facts before we move any further forward, we are going to seek
19 discovery from the GUC Trust, from New GM, in terms of
20 understanding who all attended this very critical meeting this
21 week, what discussions preceded that meeting, what, if any,
22 inducements were made, what, if any, threats were extended, and
23 whether the inducements crossed the line of Title 18.

24 Your Honor, that's really all I had to tell you by
25 way of update. We are -- devastated is the wrong word. We are

1 shocked and amazed that after months of collective work by the
2 only party that -- under the plan of reorganization for Old GM
3 and under the GUC Trust agreement approved by new GM as the
4 buyer, the only party in interest that has standing to
5 deliberate on late claims and the only party authorized to take
6 a position with regard to the allowance or estimation of late
7 claims, the GUC Trust, after working with us for months,
8 somehow was convinced virtually overnight to back out. And we
9 intend to get to the bottom of that. Whether it takes efforts
10 to discovery, whether the unitholders themselves exercised
11 their rights under the trust agreement to replace the trustee,
12 all remains to be seen.

13 There are a couple of other things that I think are
14 preliminary, but I'll put them on the table in any event. The
15 GUC Trust is possessed of material. I don't remember the exact
16 dollar amount, 4- or \$500 million. Once upon a time, we had a
17 proceeding before your predecessor with regard to injunctive
18 relief, seeking to ensure that until the late claims
19 controversy were resolved, no further distributions got made
20 out of the GUC Trust. The record will reflect that Judge
21 Gerber found in our favor. However, he required us to post a
22 very significant supersedeas bond.

23 One of the interesting aspects of the reported
24 agreement between New GM and the GUC Trust that's the subject
25 of the letter you got from King & Spalding, I think it was

1 yesterday, is that New GM, in effect, will guarantee a rate of
2 return. Well, that means, I presume, that if we press forward
3 again, the supersedeas bond has, thanks to our good sponsor,
4 New GM, been taken off the table. But, Your Honor, we can't
5 see or stand still for subsequent distributions out of this
6 trust under the present facts and circumstances.

7 So, Your Honor, I hope you'll give us some time to
8 get our ducks in a row, figure out where do we go from here.
9 I'm hearing rumors of the fact that the GUC Trust administrator
10 wants to take a meeting with the GUC Trust beneficiaries and
11 maybe they'll have second thoughts about abandoning this deal
12 or second thoughts about entering into this new deal that's
13 been offered by New GM. So there are still a lot of balls in
14 the air. And, Your Honor, I know all of us want to get on with
15 late claims and estimation and allowance, but if you'd give us
16 a couple of weeks just to get our act together, we'd appreciate
17 it.

18 THE COURT: Thank you, Mr. Weisfelner.

19 MR. WEISFELNER: Thank you, Judge.

20 THE COURT: I'd like to hear from the GUC Trust
21 counsel next.

22 MR. MARTORANA: Good afternoon, Your Honor. Keith
23 Martorana of Gibson, Dunn & Crutcher on behalf of Wilmington
24 Trust Company as GUC Trust administrator.

25 THE COURT: Can I ask you why you were smirking when

1 Mr. Weisfelner was delivering his remarks to the Court?

2 MR. MARTORANA: Well, Your Honor, the reason why I
3 was smirking was because, frankly, I was at the meetings. And
4 to be totally candid with Your Honor, the only people that were
5 at the meetings were counsel for New GM and counsel for the GUC
6 Trust. There were no principals at the meeting, although we,
7 of course, spoke with principals afterwards.

8 The concept that any of this discovery, which, I
9 mean, to the extent we file a motion, which I think was
10 anticipated, certainly might be acceptable, I mean, with
11 reservation of --

12 THE COURT: What motion are you going to file?

13 MR. MARTORANA: We're -- our intention is to file a
14 9019 motion seeking approval of the deal, the proposed deal
15 with New General Motors. That deal, Your Honor, was outlined
16 in a letter that we filed yesterday.

17 THE COURT: I read the letter.

18 MR. MARTORANA: Okay. So just to get back to your
19 question, Your Honor, I was obviously -- I was at that meeting.
20 The concept that there was any untoward threats or anything
21 that was illicit that happened at that meeting, in my view, is,
22 I mean -- well, I guess the discovery will show it, if we have
23 discovery, but it just frankly didn't happen. So that is why I
24 was smirking, Your Honor. At the end of the day --

25 THE COURT: It didn't seem very funny to me, but you

1 seemed to think so.

2 MR. MARTORANA: What's that?

3 THE COURT: I was watching you as Mr. Weisfelner was
4 delivering his remarks, and you seemed to think it was funny.

5 MR. MARTORANA: Well, Your Honor, I mean, I didn't
6 think -- I thought it was --

7 THE COURT: This is a serious matter.

8 MR. MARTORANA: I agree it's a serious matter, Your
9 Honor. I definitely do not disagree with that. I just did
10 not, frankly, understand. I think that it's a stretch -- I
11 mean, obviously he wasn't there, but I think it's a stretch to
12 think that that --

13 THE COURT: When was the meeting?

14 MR. MARTORANA: The meeting was on, I believe,
15 Tuesday, Tuesday of this past week.

16 THE COURT: And who was present?

17 MR. MARTORANA: Mr. Steinberg, Mr. Davidson, myself,
18 Mr. Williams, and Mr. Gillette, who are over in the corner.
19 Those were the only participants in the meeting.

20 THE COURT: And --

21 MR. MARTORANA: Oh, and I'm sorry, there was someone
22 on the phone from Kirkland & Ellis, as well, Mark Nomellini
23 from Kirkland & Ellis.

24 So, Your Honor, the fact of the matter is, you know,
25 obviously we have -- I don't disagree with Mr. Weisfelner's

1 statements that we had been working with him --

2 THE COURT: It just happened -- you know, as I said
3 earlier, I didn't read the proposed settlement agreement in
4 detail. It's a very lengthy --

5 MR. MARTORANA: It is.

6 THE COURT: -- exhibit, but it would seem to have
7 reflected a very considerable amount of time in negotiating the
8 agreement in the various --

9 MR. MARTORANA: It did.

10 THE COURT: -- exhibits. Can you tell me --

11 MR. MARTORANA: It did. I do not disagree with that.

12 THE COURT: Can you tell me approximately how long
13 the negotiations were going on.

14 MR. MARTORANA: Well, I think I would say that the
15 concept of negotiations had been going on for, I mean, probably
16 close to a year, I think.

17 THE COURT: Well, without the concept. These were
18 very --

19 MR. MARTORANA: The actual true --

20 THE COURT: Stop. Wait until I finish my questions.

21 Attached to Mr. Weisfelner's letter as -- are various
22 exhibits, voluminous exhibits, but the settlement agreement is
23 -- and its immediate exhibits are quite voluminous. Can you
24 tell me how long the negotiations and drafting of the actual
25 settlement documents went on for?

1 MR. MARTORANA: I would say about two months I think
2 is probably accurate, but --

3 THE COURT: And you had one meeting with New GM this
4 week that caused Wilmington Trust to abandon the settlement
5 agreement?

6 MR. MARTORANA: We did, Your Honor.

7 THE COURT: One meeting. Okay.

8 MR. MARTORANA: One meeting. Yes, we did, Your
9 Honor. In our view, as a fiduciary, we were initially willing
10 to go forward with the deal, with the settlement as presented.
11 Obviously it was --

12 THE COURT: And what is it --

13 MR. MARTORANA: -- never signed off on.

14 THE COURT: And what is it that New GM said that
15 persuaded your client to abandon the deal that had been under
16 discussion for considerable time and negotiation of documents
17 for quite a long time?

18 MR. MARTORANA: Well, certainly they reminded of many
19 of the things we already knew, which was the risk --

20 THE COURT: Go ahead. None of this is privileged, so
21 tell -- I want to hear what you have.

22 MR. MARTORANA: Sure. They reminded us of all the
23 risks that were associated with the proposed settlement, in
24 particular the execution risks, which I can get into if you'd
25 like. But there were certainly numerous execution risks.

1 THE COURT: Well, there's going to be discovery, so I
2 would like to hear now -- and it probably will inform the
3 discovery.

4 MR. MARTORANA: Sure.

5 THE COURT: And I'm sure you'll be complete in
6 telling me what was -- how long did the meeting last?

7 MR. MARTORANA: Maybe two hours --

8 THE COURT: Okay.

9 MR. MARTORANA: -- at most, I would say.

10 THE COURT: And were documents circulated to you in
11 advance of the meeting?

12 MR. MARTORANA: No, there were no documents
13 circulated.

14 THE COURT: Was the decision to abandon the
15 settlement made at the meeting?

16 MR. MARTORANA: The -- well, again, there were no
17 principals there, so there was no decision that could be made
18 at that meeting. There was an offer that was floated, which
19 was tentative. We followed up with our principals. They
20 followed up with their principals. And then, over the next day
21 or so, that proposal was boiled down to something more
22 concrete.

23 THE COURT: And tell me what the proposals that New
24 GM made to you at the meeting.

25 MR. MARTORANA: Well, the proposal that they made at

1 -- the first proposal that they made was continuing litigating
2 and we will pay your litigation costs against the plaintiffs.
3 That was the initial proposal that they made. We ultimately
4 said, it's interesting, that sounds like something that we
5 might be able to work with, but at the end of the day, what our
6 two main concerns here are, that we're continuing a litigation
7 really for the benefit of New GM. We feel like we've been
8 pulled into this, so obviously we're worried about spending
9 trust -- unitholder money for those purposes.

10 But then the -- a secondary or perhaps even bigger
11 issue is that at some point, probably after the term loan
12 litigation is fully and finally resolved, the GUC Trust will be
13 in a position to make a distribution to unitholders. At this
14 point the GUC Trust cannot make a distribution to unitholders
15 until we figure out whether or not the 502(h) claim of the term
16 loan defendants is legitimate. But at some point that will be
17 resolved, our mediation settlement or otherwise, and then we'll
18 be in a position to make a distribution. And to the extent --

19 THE COURT: Anybody who negotiates a settlement with
20 you better be careful because they may spend months doing it,
21 only to have you pull the rug out from under them at the last
22 hour. You're smiling again.

23 MR. MARTORANA: I'm sorry, I guess the question was I
24 didn't -- I don't understand --

25 THE COURT: My comment was that anybody who

1 negotiates a settlement with you better be careful because you
2 may well pull the rug out from under them after months of
3 negotiation. That was my comment as to which you had your big
4 grin on your face again.

5 MR. MARTORANA: Well, I apologize, Your Honor. But
6 at the end of the day, we are a fiduciary and we're going to
7 act in our fiduciary capacity. And if that means abandoning a
8 proposal --

9 THE COURT: And what other proposals did New GM make
10 to you that you considered in, I assume -- well, I won't ask
11 you what you recommended to your client. What other proposals
12 did New GM make to you in the form of consideration for
13 abandoning the deal with the plaintiffs?

14 MR. MARTORANA: Sure. So again, getting back to the
15 point about a distribution, we said our two main concerns were
16 that we're continuing a litigation. It's -- there's been a
17 number of costs that have been associated with that obviously.
18 It's continuing to pull down on trust assets.

19 And then the secondary aspect is that if we are in a
20 position to make a distribution and these claims continue to be
21 out there, there is no way that we're going to -- well, we
22 probably would not be able to make a distribution over the
23 existence of those claims. And we would therefore -- currently
24 we're investing our assets -- required to invest our assets in
25 treasuries, and that is not really going to be a sufficient

1 rate of return that we could otherwise get if this deal were to
2 go forward, and this deal -- the plaintiffs' deal, and if we
3 were able to get the releases that we would be hoping for under
4 that -- under the plaintiffs' deal.

5 So the offer after further discussion that was made
6 was that New GM would be potentially willing to provide us with
7 a rate of return. We don't know what that would be. We've
8 agreed that we would enter into good-faith negotiations to
9 determine what that rate of return would be because, among
10 other things, we don't know what the corpus of the trust will
11 be at that time. So it's hard to come to something -- to that
12 kind of agreement today.

13 But those -- we felt that those two things,
14 particularly given the fact that we believe on the merits we
15 have very strong arguments against the late claims, on Pioneer,
16 on equitable mootness, on tolling arrangements, that this offer
17 from New GM dealt with the main concerns that we were -- that
18 we had. And as a fiduciary, we felt that we needed to do that.
19 We felt that you don't necessarily go for -- I understand that
20 hedge funds want to go for the absolute home run at the risk of
21 \$21 million and everything else out there, but we represent
22 all --

23 THE COURT: What's the \$21 million?

24 MR. MARTORANA: So the way that the plaintiffs'
25 proposal would work is that the GUC Trust would, up front, pay

1 \$6 million for purposes of noticing. So that would be out the
2 door before we even really get in front of Your Honor. That
3 would just be a sunk cost for postcards. And then it would be
4 followed by a \$15 million payment and our agreement to support
5 a \$10 billion claim as against New GM. And we felt, among
6 other things, that there was a significant amount of execution
7 risk associated with that. And, frankly, among other things,
8 that proposal, what we were really hoping to get out of it was
9 a release, get a true release from all the plaintiffs.

10 Given the fact that that proposal did not contemplate
11 and the plaintiffs would not agree to a Rule 23 settlement
12 certification, I think there's a potential execution risk
13 associated with actually accomplishing what it was that we
14 wanted to accomplish.

15 THE COURT: Okay. Anything else you want to tell me
16 now?

17 MR. MARTORANA: No. Thank you, Your Honor.

18 THE COURT: All right.

19 Mr. Golden, I'd like to hear from you next.

20 MR. GOLDEN: Yes. Good afternoon, Your Honor.

21 Daniel H. Golden, Akin, Gump, Strauss, Hauer & Feld, counsel
22 for what's known as the participating unitholders.

23 Your Honor, this is really unfortunate that we find
24 ourselves in this situation where everybody now, in open court,
25 has to air their dirty laundry about a settlement that I think

1 was agreed to in principle. I will say for the record I can
2 confirm the factual recitation that Mr. Weisfelner made as to
3 the facts leading up to the announcement by New GM and the GUC
4 Trust of their -- of GUC Trust's disavowal of that settlement
5 agreement and their intention to enter into a purported new
6 agreement with New GM.

7 Your Honor, I think it's clear something very odd is
8 going on here. We worked arm in arm, shoulder to shoulder,
9 with the GUC Trust, Wilmington Trust as the trustee and the
10 trust administrator, and with its counsel, Gibson Dunn, over
11 several months to negotiate and document a settlement. We had
12 many, many, many conversations, drafting sessions, redrafting
13 sessions to get to a point where we were, as of last Friday, to
14 get to a settlement, a global settlement as between the
15 plaintiff class, the GUC Trust, and the unitholders.

16 So let's talk a minute about who we represent. We
17 represent 65 percent of the unitholders. That is the
18 shareholders of the trust. They are the only beneficiaries of
19 the trust should the reserves be freed up. That's the reserves
20 of the 4- or 500 million that Mr. Weisfelner referred to, and
21 we represent 65 percent.

22 Look, I've worked really closely with the Gibson Dunn
23 lawyers. I like them. But to hear them talk about that they
24 have fiduciary duties, yes, they do. Wilmington Trust has
25 fiduciary duties. They have fiduciary duties to my clients.

1 Now, we don't represent all of the unitholders, but everyone
2 who has raised their hand and said, "I'm here and I want to get
3 involved," we represent them.

4 We worked really hard to get to this global
5 settlement, which would have had the benefit or the result of
6 eliminating all the late-claim litigation and all the
7 underlying allowance of those claims. We think that that's a
8 settlement that this Court would have welcomed. And that's
9 why, in part, we worked so hard to get there. But in a blink,
10 in really literally a blink, without any conversation to the
11 unitholders or their counsel, without any invitation by Gibson
12 Dunn or Wilmington Trust to say, we've met with GM, they have
13 an alternative proposal on the table, we'd like to get your
14 views on it.

15 We certainly shared views with them for months and
16 months, but when it came to the point where they were willing
17 to disavow that settlement and consider a new settlement which
18 does not work for the participating unitholders, we sent a
19 letter to Your Honor this morning so that there's no mistake.
20 All of the unitholders we represent will not and do not support
21 the proposed settlement with GM.

22 So you have to ask the question, what is Wilmington
23 Trust thinking about when they want to go forward with a
24 settlement that has the disapproval of every fiduciary that it
25 represents who's weighed in on the subject? Now, I'm not

1 saying that Wilmington Trust, who as an institution we worked
2 with for years. Frankly, I'm just surprised we find ourselves
3 in this situation given our prior relationship and experience
4 with Wilmington Trust. But what are they thinking about going
5 forward with a settlement over what will be active opposition
6 by the unitholders? Something --

7 THE COURT: Well, active opposition by New GM to the
8 proposed settlement that was --

9 MR. GOLDEN: That's right.

10 THE COURT: I mean, one way or the other, there's
11 going to be active opposition.

12 MR. GOLDEN: That's absolutely right. But the one
13 difference is the trust has no fiduciary obligations to New GM.
14 They do have fiduciary obligations to our client. And I
15 confirm or reaffirm what Mr. Weisfelner said, that we did
16 expect active opposition from New GM. We've had active
17 opposition from New GM almost throughout the inception of these
18 matters, so that's not a total surprise. But what is
19 shockingly surprising to us is what was the motivation, what
20 was the rationale, what happened at that two-hour meeting to
21 have this absolute sea change.

22 Now, look, everybody's imagination can run wild.
23 Were there threats? Were there inducements? But there was
24 something there that caused, in two hours, for Wilmington Trust
25 and its counsel just to disavow five months of hard work, and

1 we intend to find out what it is. It's odd to us that we had
2 been originally -- when I said "we," the participating holders,
3 through their counsel, had been invited to the meeting that GM
4 had scheduled with Wilmington Trust, and then promptly
5 disinvited.

6 THE COURT: Who disinvited you?

7 MR. GOLDEN: We were advised by counsel for
8 Wilmington Trust that we were not -- we were no longer invited
9 to it. I didn't question them. I accepted that at face value.
10 I don't know who demanded it, but that's where the
11 communication came from.

12 Your Honor, I don't want to make this situation
13 worse. We intend, to the best of our ability, still to work
14 with our trustee. But if we can't, then we're going to
15 consider our alternatives, and that is not a threat, but it
16 just -- it's a recognition of the reality of the situation that
17 we find ourselves in.

18 This case, this overhang of the plaintiffs' claim,
19 have held this trust in abeyance for a very long time. The
20 goal of this settlement was to, once and for all, be done with
21 the plaintiffs, get an absolute, full-bore release from the
22 plaintiffs in exchange for us doing the \$6 million of noticing
23 costs -- and I'll come back to that in a second -- and a
24 \$15 million payment. Part and parcel of that overall
25 settlement agreement, but not interdependent upon getting the

1 release, was the agreement of the GUC Trust, supported by the
2 participating holders, to estimate the totality of the
3 plaintiffs' claims at somewhere around \$10 billion, which would
4 have the effect of triggering what's known as the accordion
5 shares. I know that's the part that GM doesn't like. But they
6 would have every opportunity to object to that estimated
7 settlement of \$10 billion. We weren't looking to deprive them
8 of their ability to do that.

9 This conference, because Your Honor remarked that it
10 wasn't originally made clear to Your Honor what the purpose of
11 this conference was, was to preview that settlement proposal
12 with you. We were certainly going to invite New GM, and we
13 thought it would be professionally courteous of us to advise
14 New GM in advance of the terms of our proposed settlement,
15 which Mr. Weisfelner and I did in a telephone call with
16 Mr. Steinberg and a partner whose name I forgot at Kirkland and
17 Ellis last Wednesday.

18 Well, what did they do with that courtesy? They
19 turned around, without any notice to us, and complained to
20 Judge Furman. Why Judge Furman? I'm not sure. These matters
21 aren't before Judge Furman. This settlement certainly wasn't
22 going to be before Judge Furman. But it was their attempt, I
23 surmise, to attempt to start to poison the well. Well, I was
24 very glad that Judge Furman's reaction was, take that up with
25 the bankruptcy court.

1 THE COURT: I should say I -- whenever I've had a
2 conversation with Judge Furman, I've disclosed that I have.
3 And I had a brief telephone conversation with Judge Furman on
4 Tuesday morning. He left a voicemail for me on Monday evening
5 and I -- we spoke on Tuesday. I -- he wanted me to be -- he
6 wanted to be sure that I knew that there had been a
7 presentation before him, or statements before him, that a
8 settlement had been reached. I told him that I read the
9 Bankruptcy 360 report about it. I told him that there had been
10 a request for a conference here, I had scheduled it, I hadn't
11 been informed at the time what the conference was about, but I
12 had scheduled it. And that was the substance of the phone
13 conversation that I had with Judge Furman.

14 So I've tried to make a point, whenever he and I have
15 spoken, I've put it on the record. We do not talk about the
16 merits of anything, but we informed --

17 MR. GOLDEN: So --

18 THE COURT: -- each other of procedural posture of
19 things.

20 MR. GOLDEN: So continuing, we had had the
21 conversation with Mr. Steinberg and his colleague. The purpose
22 of scheduling a status conference with you, Your Honor, was to
23 preview the settlement, not to argue the merits, but really to
24 preview the noticing procedures that we intend to follow
25 because this settlement contemplated a global release from all

1 the claims. And we were going to do -- when I say "we," the
2 GUC Trust was going to do and spend \$6 million on noticing to
3 make sure the plaintiffs -- something that Old GM never really
4 got around to doing, and that's why we find ourselves in this
5 mess. But we were going to give direct notice to every party
6 who was the subject of a recall notice, so that's over
7 12 million parties, as well as notice to every party who has
8 started a lawsuit against Old GM/New GM based upon a presale
9 accident claim, so that nobody could complain this time that
10 the world has been put on notice as to the proposed settlement.

11 But we wanted to get a sense from Your Honor before
12 we went out and spent \$6 million whether Your Honor thought
13 that would be an appropriate scope of notice. That's all we
14 had originally intended to do at the status conference. Well,
15 obviously events and facts have overtaken it, and we are where
16 we are.

17 Again, I'm here representing economic players.
18 They're not looking to go for the home run, as Mr. Martorana
19 said. What they're looking for is peace in the valley. They
20 want to get rid of the plaintiffs' claims and the plaintiffs'
21 claims against the trust for all time so that when the
22 avoidance action is settled or finally resolved, a final
23 distribution could be made.

24 THE COURT: What's the face amount of the
25 approximately 65 percent of the unitholders -- of the claims of

1 the unitholders you represent?

2 MR. GOLDEN: So it's not in dollar amount; it's
3 number of units.

4 THE COURT: Units.

5 MR. GOLDEN: Can I confer with my colleagues?

6 THE COURT: Yeah, go ahead, sure.

7 (Counsel confer)

8 MR. GOLDEN: It's 21 million units out of
9 approximately 31 million units.

10 THE COURT: Okay. All right. Thank you, Mr. Golden.

11 MR. GOLDEN: Thank you, Your Honor.

12 THE COURT: Mr. Steinberg.

13 MR. STEINBERG: Your Honor, Arthur Steinberg from
14 King & Spalding on behalf of New GM.

15 Mr. Weisfelner, in his presentation, said that he did
16 not want to speak prematurely until he gathered the facts, and
17 then he proceeded to speculate as to what the facts may be.
18 And there's a temptation that I have to be able to try to
19 respond to each and every time that he misstated what happened.
20 However --

21 THE COURT: Let me say first, I thought your letter
22 to the Court was intemperate and inappropriate. You could have
23 raised the issues that you raised. So I know that there's very
24 strong feelings on -- there's more than two sides here -- on
25 all sides, but I didn't appreciate the tone of your letter.

1 But go ahead.

2 MR. STEINBERG: Your Honor, you're referring to the
3 letter that I sent on Tuesday as --

4 THE COURT: Yes, I am.

5 MR. STEINBERG: The reason why -- just to explain
6 that letter on Tuesday is that, as Mr. Golden said, that on
7 August 9th, we had a telephone call with Mr. Weisfelner and
8 Mr. Golden. What Mr. Golden left out was that on the agenda
9 letter for the MDL on August 11th, under the section under
10 successor liability, the specific question of whether late
11 claims are being sought in the bankruptcy court would have
12 relevance to the briefing on successor liability, and the judge
13 wanted to know whether something had to be done or not. So if
14 there was going to be a resolution of the late claims --

15 THE COURT: Well, the fact that you raised it with
16 Judge Furman doesn't bother me in the least. What I'm
17 complaining -- what I'm commenting on is I thought the tone of
18 your letter to me was inappropriate.

19 MR. STEINBERG: Your Honor, it's never my intention
20 to write an inappropriate toned letter to Your Honor. And to
21 the extent that we did, then we apologize. The reason for the
22 letter was that this status conference was scheduled without
23 our participation, without being in compliance with Your
24 Honor's rules as to scheduling a status conference, and because
25 I expected that what was going to happen at the scheduling --

1 at the status conference was that they were going to try, in
2 effect, to get an advanced blessing on a notice provision in
3 connection with --

4 THE COURT: Well, that wouldn't -- I can assure you
5 that that would not happen.

6 MR. STEINBERG: But that's what I was essentially
7 told on August 9th and that they were going to ask Your Honor
8 to compel New GM to produce information so they can comply with
9 their notice obligation, and they were all going to try to do
10 that in a chambers conference with Your Honor, presumably off
11 the record. And that was why I wanted to write to Your Honor
12 that if there was going to be a chambers conference, it really
13 should be in open court, it should be recorded, and that if
14 they wanted to have specific relief that they were going to
15 request at the conference, that I should be able to see that in
16 writing and to have the ability, Your Honor, to give you our
17 version of why you should not be able to do that so Your Honor
18 would be able to make a ruling on an informed record. And that
19 was the motivation --

20 THE COURT: I don't make rulings at chambers
21 conferences. I don't have chambers conferences if any parties
22 in interest object to having chambers conferences. I do them
23 in open court as we're doing today on the record. So I very
24 rarely -- occasionally I will have a chambers conference, but
25 only if all parties in interest affected by the discussion are

1 present. I just want to assure you of that, Mr. Steinberg.
2 And I don't grant relief in a chambers conference. Everything
3 happens in court on the record.

4 MR. STEINBERG: Now, Your Honor, I think that -- to
5 some extent that there will be a motion filed, presumably by
6 the GUC Trust, to reference the arrangement that was agreed to
7 with New GM, and there will be a pleading that will be filed.
8 There will be an opportunity to object. We will have the
9 opportunity to put in what really happened and why the GUC
10 Trust had changed its position. And it wasn't because anybody
11 induced anything. It was because what they had proposed was
12 what Mr. Martorana described as execution risk. Our belief was
13 it was impossible to get to that point in time.

14 The reality was -- is that they were proposing a
15 settlement where a person who was paying the liability was New
16 GM on account of a \$10 billion claim which we thought had no
17 basis in reality in connection with primarily time-barred
18 claims where the plaintiffs had purposefully not pursued
19 remedies against Old GM for years after the recalls were
20 announced, and that they had rolled over on those defenses on
21 late claims without giving any credence to that value.

22 THE COURT: Well, Judge Gerber had determined that
23 there was equitable mootness, and it wasn't until the Second
24 Circuit reversed and specifically referenced the accordion
25 provision in its opinion that at the first conference I had, I

1 think, after the Second Circuit opinion, I raised the question
2 about late claims because it seemed clear to me, A, the Second
3 Circuit had reversed with respect to equitable mootness, that
4 there was the potential for substantial new value. I asked the
5 question -- I think I asked the question of you, I asked the
6 question of Mr. Weisfelner, how close to the \$35 billion
7 threshold of allowed unsecured claims were you.

8 And because that's -- as I -- I didn't go back and
9 read it again, but my recollection is that was the trigger
10 point for additional New GM shares. So I think it must have
11 been very close to the first hearing when I presided after the
12 Second Circuit opinion that I raised those questions. And
13 we've had a discussion since then about motion for late claim.
14 You wanted to take discovery about the Pioneer factors. I
15 authorized discovery regarding the Pioneer factors.

16 So there's a history here, Mr. Steinberg. You don't
17 have it quite right. All right. I don't know whether the
18 settlement that was proposed that's unsigned -- Mr. Weisfelner
19 believes it's enforceable under New York law. There's a whole
20 body of law about when an agreement can be enforceable. I'm
21 not taking any position about it at all, whether it's
22 enforceable or not. I don't know whether it would have been
23 approved over New GM's objection. Not taking a position about
24 that. It just -- the events of the last week, I've had a
25 couple of letters that indicated that the plaintiffs believed

1 they were making progress with the GUC Trust in its settlement
2 negotiations. But I stay out of settlement negotiations.
3 Okay? When Magistrate Judge Cott called and asked if I
4 objected to his being a mediator, I made clear I didn't, and I
5 informed everybody in court about that call.

6 So there's a history, not quite what you describe it
7 as. I want -- go ahead and finish, and then I'll say what I --

8 MR. STEINBERG: Your Honor, the history that you may
9 not be aware of that preceded your handling of this case was
10 that Judge Gerber, in connection with the first distribution
11 that was made by the GUC Trust in 2014, did not see anybody
12 trying to block that distribution. And when he confronted on
13 the oral argument on the four threshold issues, when he asked
14 Mr. Weisfelner, why didn't you do anything to block the
15 distribution, why didn't you sue Old GM for your Old GM
16 liabilities, why did you only sue New GM under a successor
17 liability, he said it was a tactical decision that they had
18 made to only pursue New GM.

19 In Judge Gerber's April 2015 sale decision, he
20 specifically references the tactical decision made by the
21 plaintiffs not to sue Old GM, but only to sue New GM as one of
22 the bases to support his equitable mootness finding, that they
23 had, in effect, precipitated what went on.

24 The two threshold issues, Your Honor, that you asked
25 us to brief in connection with the late claims issue was, one,

1 was there a tolling agreement and when -- if there was, when
2 did the tolling agreement take place. And that was one of the
3 issues because one of our arguments is that even after the
4 announcement of the recalls and before the equitable mootness
5 issue was even raised by Mr. Golden to add as a threshold
6 issue, the plaintiffs had tactically decided not to sue Old GM
7 in the face and the knowledge of the recalls. That is an
8 argument. They have always had the ability to file late
9 claims --

10 THE COURT: We may get there, Mr. Steinberg, because
11 if I have to go on and address the late claim motion as a class
12 claim, I will. Okay?

13 MR. STEINBERG: Your Honor, I --

14 THE COURT: It's premature for me to hear the
15 arguments now.

16 MR. STEINBERG: Right. Your Honor, it's -- the only
17 thing I would like to say to you is that there is a large
18 portion of things that were said to you today that are either
19 misleading or would benefit from context, written context,
20 written pleadings to be able to understand it. I have a list
21 of things that I jotted down. I don't think necessarily a
22 conference is the time to do it, but I do want to say one issue
23 as long as I have Mr. Berman here in court because Mr. Berman
24 said in the MDL, and Mr. Weisfelner repeated it at the
25 conference, on page 38, he said, "I'm pretty confident that the

1 sale agreement actually gives New GM no rights to object."

2 Now, you heard Mr. Golden say, "Of course, New GM always would
3 have the right to object." But Mr. Berman's lawyer in this
4 case is Mr. Weisfelner.

5 And before Your Honor was -- took over this case in
6 2015, at the status conference before Judge Gerber on
7 July 16th, Mr. Weisfelner said if we were -- meaning as, on the
8 one hand, GUC Trust unitholders and on the other hand able to
9 consummate a settlement, it would be brought to the Court's
10 attention under Rule 9019, I presume either in this court or to
11 Judge Furman, depending on the resolutions of the motions to
12 withdraw the reference on notice to New GM. And New GM will
13 have an opportunity to oppose that 9019, take the position
14 that, as Your Honor indicated, we colluded, in effect, to stick
15 it to New GM, and they'll be entitled to be heard on the merits
16 with regard to that contention, and the settlement will not be
17 effective unless and until the Court overrules the objection.

18 So Mr. Berman told Judge --

19 THE COURT: Well, the settlement isn't going to be
20 effective until I approve it unless --

21 MR. STEINBERG: That's correct.

22 THE COURT: -- the reference is withdrawn and Judge
23 Furman deals with it.

24 MR. STEINBERG: But this is --

25 THE COURT: So whether -- you know, the issue of New

1 GM's standing can be dealt with at an appropriate time.

2 MR. STEINBERG: The only thing that I --

3 THE COURT: Today is not the time.

4 MR. STEINBERG: Right. The only thing I just wanted
5 to highlight was that you heard Mr. Weisfelner say today and
6 Mr. Berman say in the MDL conference that New GM would not have
7 standing, and all I wanted to do is provide --

8 THE COURT: I didn't hear anybody tell me that New GM
9 doesn't have standing. I called you to the podium, and we'll
10 see.

11 MR. STEINBERG: No, no. Mr. Weisfelner I think
12 actually alluded to that, as well, too, but --

13 THE COURT: I don't think he did. I don't think he
14 did.

15 MR. STEINBERG: But certainly Mr. Berman did on the
16 MDL conference.

17 THE COURT: Perhaps he did before Judge Furman. I
18 haven't read the transcript of what took place before Judge --

19 MR. STEINBERG: It's attached to one of the letters.

20 THE COURT: Yes, I know. There's a voluminous stack
21 of papers that --

22 MR. STEINBERG: And so, Your Honor, I go through
23 this --

24 THE COURT: I read as much of it as I could.

25 MR. STEINBERG: I go through this not to be able to

1 argue New GM's standing in connection with a proposed
2 settlement. That is not before Your Honor. I only do that for
3 one reason, which is that what you've heard today is -- to some
4 extent needs to be put in context, needs the benefit of written
5 pleadings to be able to make a presentation to Your Honor so
6 that you're able to think about it before you take to the bench
7 instead of having it presented in a disjointed way.

8 THE COURT: Here's how we're going -- well, first,
9 all right, anything else, Mr. Steinberg?

10 MR. STEINBERG: Only that -- I think that's it, Your
11 Honor. Thanks.

12 THE COURT: Okay. Anybody else wish to be heard?

13 All right. Mr. Martorana indicated that he
14 anticipates making a 9019 motion asking the Court to approve
15 the settlement between the GUC Trust and New GM.

16 Mr. Weisfelner articulated a position that he
17 believes that the plaintiffs have an enforceable agreement
18 under -- was the written agreement governed by New York law?

19 MR. WEISFELNER: Yes, Your Honor.

20 THE COURT: Okay. He believes that the plaintiffs
21 have an enforceable agreement, even though there's nothing
22 signed, against the GUC Trust. I'm not going to -- I may well
23 hear both motions at the same time. It's clear that discovery
24 needs to take place. I direct that counsel meet and confer
25 promptly and discuss discovery and set forth, hopefully, an

1 agreed plan of discovery that will cover both proposed
2 settlements. To the extent there are disagreements, they can
3 be presented to me. With respect to discovery disputes
4 generally, I don't require formal motions. We can schedule
5 another conference fairly soon. I want you to meet and confer
6 and see if you can resolve issues about discovery within the
7 next week. I understand people have vacations and -- you know,
8 within two weeks you ought to be able to resolve those issues.

9 Get a date from Deanna for another conference in
10 court, open court status conference. If you have a stipulation
11 on a plan of discovery, you can present it to me without a
12 hearing. If not, we'll take it up in early September and try
13 and get that resolved.

14 I've heard a lot of things in a short amount of time
15 today. I don't know whether the trust agreement includes
16 provisions on threshold levels to change the trustee, for
17 example. I don't know how that works, and at this stage I
18 don't really want to know how it works. But certainly that was
19 an issue that was raised today as to the possibility that
20 unitholders are going to seek to replace the trustee. I'm not
21 advocating at all. Any matters that Wilmington Trust has been
22 involved in that I've presided over, they've done a very
23 professional job. I have no reason to think that they didn't
24 do so here. But there are a lot of moving parts. So at a
25 status conference in early September, I would like to know

1 quite specifically how the parties collectively propose to
2 proceed.

3 So what I've heard is at least two -- and I'm not
4 setting a deadline for the GUC Trust to file a 9019 motion. I
5 want fairly soon. It doesn't have to be before we have a
6 conference in early September, but I do want that fairly soon.
7 This has got to get -- you know, if there's no settlement, if
8 the GUC Trust's proposed settlement with New GM is rejected, if
9 there's no enforceable settlement by the plaintiffs with the
10 GUC Trust, we'll go forward with the contested motion for leave
11 to file a late class claim and we'll just head down that
12 litigation road if that's the direction it's going to go.

13 There may be other issues that some or all of you
14 wish to raise, and I want to make clear to all of you any
15 pleadings or correspondence with the Court needs to be civil in
16 tone and identify those issues which, in good faith, people
17 believe there needs to be discovery or needs to be presented to
18 the Court in an appropriate context, motion, I assume.

19 Anything else anybody wants to raise today?
20 Mr. Steinberg?

21 MR. STEINBERG: Your Honor, I understand clearly the
22 notion about discovery and working with -- on a meet and
23 confer, but right now we presumably will have a pleading by the
24 GUC Trust, I presume to put forth the New GM agreement. We
25 don't have anything on the other side.

1 THE COURT: Well, you only pulled the rug out from
2 under them yesterday. Why am I not surprised? They thought
3 they had an agreement with the GUC Trust --

4 MR. STEINBERG: No, no, Your --

5 THE COURT: -- Mr. Steinberg. And they have a very
6 voluminous set of documents. Are you going to give notice to
7 the same group of people that they propose and in the same
8 manner that they propose to give notice? And who's going to
9 pay for that?

10 MR. STEINBERG: Well, there's a clear reason why we
11 would not do that, because there's no giving up of any rights.
12 There's no -- there's nothing that plaintiffs are giving up.
13 The plaintiffs are going to have their day in court to -- set
14 to litigate their matter.

15 THE COURT: Well, I don't know. I'm not sure.
16 That's going to be an issue the Court's going to have to
17 address as to what notice must be given, and it may be that
18 Wilmington Trust, as the trustee, is going to be required by
19 the Court to give notice to every one of the unitholders of a
20 proposal for the Court to approve a 9019 settlement.

21 And, of course, if they want to make that motion for
22 approval of the settlement and -- the parties better address
23 who has to have notice of it. And if they want to make the
24 motion, they're either going to pay for it or New GM is going
25 to pay for it.

1 MR. STEINBERG: Well, Your --

2 THE COURT: Okay. And -- well, we'll see. Okay.

3 MR. STEINBERG: But my --

4 THE COURT: So don't think, Mr. Martorana, that by
5 the fact that you're not going to have to do the notice program
6 that would have been required by the plaintiffs, that you're
7 not going to have to do exactly the same thing in order to get
8 the Court to consider the 9019 motion that you're talking
9 about.

10 MR. MARTORANA: May I speak, Your Honor?

11 THE COURT: Not yet.

12 MR. MARTORANA: Okay.

13 MR. STEINBERG: Your Honor, so that my comments are
14 hopefully better put into context, I wasn't criticizing the
15 plaintiffs for not having a pleading as of today.

16 THE COURT: It sounded that you were.

17 MR. STEINBERG: No, no. Your Honor, I was saying
18 that we were talking about a discovery program without the
19 framework of a pleading.

20 THE COURT: Well, you know exactly what the framework
21 is. There's a fairly voluminous set of papers that they've
22 presented. You can sit down and you can negotiate. If you
23 can't -- you can work out the discovery plan, and they'll tell
24 you what it is they want. And if you're opposing it or you
25 can't resolve it, you'll be back to me very shortly.

1 I'm assuming that the plaintiffs contemplate making a
2 motion to enforce what they believe is an enforceable
3 settlement, so I will have before me at the same hearing two
4 proposed conflicting settlements. Okay? And an evidentiary
5 hearing is undoubtedly going to be required. Okay? And I'm
6 not going to do them separately or seriatim. And if Wilmington
7 Trust beats the plaintiffs to the punch in making the motion,
8 that's not going to make a difference because I'm going to
9 schedule them together, and there's going to be discovery
10 beforehand.

11 So I'm directing you to meet and confer and try and
12 agree on a proposed discovery plan. If you can't agree, you're
13 going to be back to me very shortly and I'll resolve the
14 differences. I'd also like to know from both sides when they
15 contemplate filing pleadings in support of their positions, the
16 9019 that Wilmington Trust wants to present, the -- it's not a
17 9019 -- well, I guess it is. It's -- you think you have an
18 enforceable settlement. It'll be presented as a 9019.

19 MR. STEINBERG: I think it was --

20 THE COURT: So I will have competing settlements.

21 MR. STEINBERG: I think, Your Honor, you answered my
22 question, which was that at some point there needed to be a
23 pleading --

24 THE COURT: Yes.

25 MR. STEINBERG: -- to tie it into the discovery, and

1 all I was standing and rising is that --

2 THE COURT: Well, I'm not sure, Mr. Steinberg,
3 because even if they didn't, I think that they'd be entitled to
4 that same discovery with respect to any 9019 proposal from
5 Wilmington Trust.

6 MR. STEINBERG: I agree with that. The only question
7 is, is that if there's going to be an evidentiary hearing as to
8 whether there was an enforceable agreement with the plaintiffs,
9 there needed to be a pleading on that. That's not on the
10 record. And all I was saying is that --

11 THE COURT: Okay. We'll be left with no man's world
12 with neither settlement being approved, but that's the way
13 it'll be.

14 MR. STEINBERG: I understand.

15 THE COURT: Okay.

16 MR. STEINBERG: That was the only --

17 THE COURT: But you all -- specifically I am asking
18 that you need to address who would need to receive notice of
19 Wilmington Trust's 9019.

20 So let's -- any other issues that need to be
21 addressed today? Mr. Weisfelner?

22 MR. WEISFELNER: Your Honor, I promise we'll be
23 quick. I want to get out of here, and I presume Your Honor
24 would like to do the same. I just find it strange that in
25 contemplation of discovery on a motion by the plaintiffs to

1 enforce Wilmington's obligations under the settlement
2 agreement, New GM's counsel stands up to tell you, well, we're
3 going to take discovery on that because they haven't filed a
4 motion yet.

5 THE COURT: Well, let's --

6 MR. WEISFELNER: If anyone would have said it --

7 THE COURT: Mr. Weisfelner, I think I've addressed
8 the discovery issue. I don't need to hear any more.

9 MR. WEISFELNER: You're right. But here's my only
10 other concern in terms of an orderly procedure where we meet
11 and confer and do our best as professionals to work out a
12 consensual arrangement. New GM is already on the record that
13 any consideration of our settlement, whether compelled under
14 New York law or otherwise, that New GM insists that that matter
15 be before Judge Furman, insists they intend to withdraw the
16 reference.

17 I just point that out because it would be I think
18 very difficult, if not impossible, to work out a scheduling
19 motion where the motion to compromise between New GM and the
20 GUC Trust stays here and the motion to settle, as obligated
21 under New York law, as threatened by New GM, goes upstairs.

22 THE COURT: Mr. Weisfelner --

23 MR. WEISFELNER: We'll try --

24 THE COURT: Mr. Weisfelner, the filing of a motion to
25 withdraw the reference does not stay the action before the

1 bankruptcy court. I have always, in every matter before me,
2 made clear that when a motion to withdraw the reference is
3 filed, I continue on. The case continues forward. I do not
4 stay matters because of a motion to withdraw the reference.

5 Judge Furman can do what he believes is appropriate
6 under the circumstances. What -- and I suspect at an
7 appropriate time it'll be briefed. The claims allowance
8 process is so clearly part of the core bankruptcy function.

9 Okay?

10 MR. WEISFELNER: Thank you, Judge.

11 THE COURT: So what Judge Furman decides is up to
12 Judge Furman. I am pushing forward. And with either a
13 litigated motion for leave to file a late class claim or one or
14 more settlements that might alter that -- I mean, if the
15 settlement with Wilmington Trust is approved -- if Wilmington
16 Trust's settlement with New GM is approved, the litigation
17 still goes forward before me. Okay? It doesn't alter that.
18 So one way or the other, we're pushing forward. If Judge
19 Furman wishes to withdraw the reference, if he believes it's
20 appropriate to do it, he'll do that. But unless and until he
21 does, we go forward.

22 You know, there have been a few occasions where
23 literally it was crystal clear because of jury trial demands,
24 et cetera, there was an absolute right to a jury trial. With
25 other judges I've just -- you know, we went forward. It was a

1 signed case -- you know, there was a signed pretrial order.
2 The matter went to the district court, and it's funny that
3 within a matter of days it settled. Nobody wanted the trial
4 anymore.

5 But -- so we will push forward and I will resolve
6 whatever is before me. I read in, you know, I think, Mister --
7 one of Mr. Steinberg's letters an issue about 157(b)(5). I
8 don't think that affects estimation, which as I understand was
9 the approach that the proposed settlement of the plaintiffs
10 had. We'll see what we get to.

11 First step is what discovery is going to take place.
12 I want to know, when we meet next, when you're each going to
13 file pleadings in support of your respective motions. They are
14 going to be heard together. Anything else anybody wants to
15 raise today?

16 Mr. Golden?

17 MR. GOLDEN: Just one last thing, Your Honor. I --
18 it would be helpful to the unitholders, no one else, that we
19 don't leave today's court session with an absolute certainty
20 that the New GM/GUC Trust arrangement is actually going to be
21 signed and finalized. I --

22 THE COURT: I can't effect that, Mr. Golden.

23 MR. GOLDEN: No. I understand that, but I want to
24 say that the unitholders are optimistic in having further
25 discussions with its trustee, its fiduciary, to make it clear

1 what the unitholders' position is. So there may be an
2 eventuality where the proposed New GM/GUC Trust settlement does
3 not actually go forward.

4 THE COURT: One or the other may not go forward.

5 MR. GOLDEN: Thank you, Your Honor.

6 THE COURT: Okay. We'll take it as it comes, but in
7 the meantime, I've got to deal with the situation that's
8 presented to me.

9 MR. GOLDEN: Thank you, Your Honor.

10 THE COURT: We're adjourned.

11 (Proceedings concluded at 4:13 p.m.)

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1 C E R T I F I C A T I O N

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3 I, Alicia Jarrett, court-approved transcriber, hereby

4 certify that the foregoing is a correct transcript from the

5 official electronic sound recording of the proceedings in the

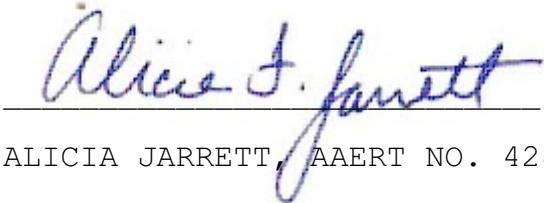
6 above-entitled matter.

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11 ALICIA JARRETT AAERT NO. 428 DATE: August 20, 2017

12 ACCESS TRANSCRIPTS, LLC

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